

**MINUTES OF THE SUPREME COURT'S
ADVISORY COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT**

May 18, 2020

The meeting commenced at 5:05 p.m. via Zoom Conferencing

Committee Members Attending:

Simón Cantarero, Chair
Adam Bondy
Daniel Brough
Tim Conde
Hon. Michael Edwards
Hon. James Gardner
Steven G. Johnson (Emeritus)
Joni Jones
Philip Lowry
Alyson Carter McAllister
Hon. Trent Nelson (Emeritus)
Amy Oliver
Cristie Roach
Gary Sackett (Emeritus)
Cory Talbot
Katherine Venti
Billy Walker

Not Present

Austin Riter
Padma Veeru-Collings (Excused)
Vanessa Ramos (Excused)

Staff:

Nancy Sylvester

Recording Secretary:

Jurhee Rice

Committee Webpage: <http://www.utcourts.gov/committees/RulesPC/>

I. Welcome and Approval of Minutes

Simón Cantarero determined quorum and welcomed the committee.

Motion:

Alyson McAllister moved to approve the minutes from the April 20, 2020. Hon. James Gardner seconded the motion. The motion passed unanimously.

II. Rule 14-301(3), “expressions of discrimination,” toward “others,” “law-related activities,” and Keeping “standards.”

Simón Cantarero reported on his meeting with the Court.

- a. Under 14-301(3), “Lawyers shall avoid hostile, demeaning, humiliating, or discriminatory conduct when interacting with any other counsel, parties, judges, court personnel, witnesses, and others.” The Court expressed concern regarding the undefined use of the word “others” in 14-301(3).
- b. Based on Court discussions, the Committee recommended adding, “in law-related activities” with a description of those activities to address vagueness and avoid chilling of protected speech activities. The Committee also recommended deleting, “any other counsel, parties, judges, court personnel, witness, and others” as these groups will be reflected within “law-related” activities.
- c. Under 14-301(3), Discriminatory conduct includes all expressions of discrimination against protected classes as enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time. The Court expressed concern regarding the phrase “all expressions of discrimination” as it relates to free speech, due process, and issues of notice in the process of discrimination.
- d. The Committee recommends removing “expressions of” so discriminatory conduct encompasses all discrimination against protected classes.
- e. Under the Committee’s proposed revisions, 14-301(3) now read as follows:

“Lawyers shall avoid hostile, demeaning humiliating or discriminatory conduct in law-related activities. Discriminatory conduct includes all discrimination against protected classes as those classes are enumerated in the Utah Antidiscrimination Act of 1965, Utah Code section 34A-5-106(1)(a), and federal statutes, as amended from time to time.”

Motion

Cristie Roach moved to approve the motion on Rule 14-301(3) regarding law-related activities omitting a list of parties but adding a definition of discriminatory law related conduct. Katherine Venti seconded the motion. The motion passed by majority.

Motion

Billy walker moved to incorporate the following language into 14-301, “Finally, the term “standard” has historically pointed to the aspirational nature of this rule. But Rule 8.4(h) now makes the provisions of this rule mandatory for all lawyers. Cross-References: R. Prof. Cond. Preamble [1], [13]; R. Civ. P. 1; R. Civ. P. 65B(b)(5); R. Crim. P. 31 1(b); R. Juv. P. 1(b); R. Third District Court 10-1-306; Fed. R. Civ. P. 1; DUCivR 83-1.1(g)” and to retain standards throughout for Rule 14-301. Joni Jones seconded the motion. The motion passed by a majority.

III. Rule 6.5: Review of subcommittee proposal

- a. Under Rule 6.5(a), A lawyer who provides short-term limited legal services to a client, normally through a one-time consultation or representation provided through a program sponsored by a nonprofit organization, a government agency, a law school, or a court, without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter.
- b. The Court expressed concern regarding use of the word “normally.”

Motion

Joni Jones moved to remove the word “normally.” Cristie Roach seconded the motion. The Motion passed unanimously.

The Committee revised Rule 6.5, comment 6 to read: “Comment 5(a): This Rule differs from ABA model Rule 6.5 to the extent that it changes the title, changes paragraph (a), adds new paragraph (c), and modifies comments [1] and [2].”

IV. Regulatory Reform

- a. The 5.4 Subcommittee will review regulatory reform comments regarding 5.4A and 5.4B and report back at the June 15, 2020 RPC meeting.
- b. Daniel Brough will report on the advertising proposal comments at the June 15, 2020 RPC meeting.
- c. Utah State Bar and Regulatory Reform CLE feedback will be reported on at the June 15, 2020 RPC meeting.

V. Other business

Farewell and thanks to Cristie Roach!

VI. Scheduling of Future Meetings

June 15, 2020 at 5:00 p.m.
August 17, 2020 at 5:00 p.m.
September 21, 2020 at 5:00 p.m.
October 19, 2020 at 5:00 p.m.
November 16, 2020 at 5:00 p.m.

VII. Adjournment

The meeting adjourned at 6:38 p.m.